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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,388	07/20/2001	Lawrence L. Kunz	295.003US5	1690
21186	7590	10/02/2003	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			ROBINSON, HOPE A	
			ART UNIT	PAPER NUMBER
			1653	

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

09/910,388

**Applicant(s)**

KUNZ ET AL.

**Examiner**

Hope A. Robinson

**Art Unit**

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-11 are drawn to a method for inhibiting one or more pathological activities of normal mammalian vascular smooth muscle, classified in classes 435 or 514, subclasses 7.1 and 2 respectively.

II. Claims 12-18 are drawn to a method for inhibiting one or more pathological activities of normal mammalian vascular smooth muscle, classified in classes 435 or 514, subclasses 7.1 and 2 respectively.

III. Claims 19-20 are drawn to a method for inhibiting one or more pathological activities of normal mammalian vascular smooth muscle, classified in classes 435 or 514, subclasses 7.1 and 2 respectively.

The inventions are distinct, each from the other because of the following reasons:

The methods of Inventions I-III are patentably distinct because the methods have different method steps. For example, Invention I comprise a sustained release dosage form, which is coated with a covalently attached binding peptide. Invention II comprises a therapeutic agent that is administered directly or indirectly to a traumatized vessel, and the method of Invention III comprises a cytocidal conjugate. Thus, the methods are different.

Although, the inventions have acquired the same status in the art they have a separate subject for inventive effect and require independent searches. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. A reference, which would anticipate the invention of one group, would not necessarily anticipate or make obvious the other group. Moreover, as to the question of burden of search, classification of subject matter is merely one indication of the burdensome nature of the search involved. Because these inventions are distinct for the reasons given above and because of their recognized divergent subject matter, election of a single group for examination purposes as indicated is proper.

Applicant is advised that the response to this election requirement to be complete must include an election of the

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invention to be examined even though the requirement be traversed.


Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Hope A. Robinson whose telephone number is (703)308-6231. The Examiner can normally be reached on Monday - Friday from 9:00 A.M. to 6:30 P.M. (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor Christopher S.F. Low, can be reached at (703)308-2923.

Any inquiries of a general nature relating to this application should be directed to the Group Receptionist whose telephone number is (703)308-0196.

Papers related to this application may be submitted by facsimile transmission. The official fax phone number for Technology Center 1600 is (703) 308-4242. Please affix the Examiner's name on a cover sheet attached to your communication should you choose to fax your response. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

Hope A. Robinson, MS   
Patent Examiner

  
KAREN COCHRANE CARLSON, PH.D  
PRIMARY EXAMINER